

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

In the Matter of:

TRIPLE CANOPY INC., A CONSTELLIS
COMPANY,

Employer,

and

Case No. 05-RC-263989

UNITED CAREER PROFESSIONALS (UCP),

Petitioner,

and

INTERNATIONAL UNION, SECURITY,
POLICE AND FIRE PROFESSIONALS OF
AMERICA (SPFPA) AND ITS LOCAL
NO. 287,

Intervenor,

and

GOVERNED UNITED SECURITY
PROFESSIONALS, (GUSP)¹,

Intervenor.

DECISION AND DIRECTION OF ELECTION

United Career Professionals (the Petitioner) filed the petition herein with the National Labor Relations Board (the Board) under Section 9(c) of the National Labor Relations Act (Act), seeking to represent a group of employees employed by Triple Canopy, Inc., A Constellis Company (the Employer). The Employer is engaged in providing physical security services at the Ronald Reagan Building located in Washington, DC.

¹ This organization did not make an appearance at the hearing.

A hearing was held via videoconference on April 21, 2020 before a hearing officer of the National Labor Relations Board.² As the parties stipulated, I find that the agreed upon Unit set forth below is appropriate for the purposes of collective bargaining:

Included: All full-time and regular part-time security guards employed by the Employer at the Ronald Reagan Building, currently located at 1300 Pennsylvania Avenue NW, Washington, DC.

Excluded: All office clerical employees, professional employees, managerial employees, project managers, assistant project managers, and supervisors as defined by the Act.

Furthermore, the parties stipulated, and I find, that the employees in the petitioned-for unit are guards under Section 9(b)(3) of the Act.

The International Union, Security, Police and Fire Professionals of America (SPFPA) and Its Local No. 287 (the Intervenor) argues that the Petitioner is not a labor organization as defined under Sec. 2(5) of the Act, and that the Petitioner's representation is not exclusive to guards under Sec. 9(b)(3) of the NLRA. The parties were permitted to file post-hearing briefs and Petitioner and Intervenor availed themselves of that opportunity. I have carefully considered the parties' respective positions.³

For the reasons set forth below, I find that the Petitioner is a labor organization under Section 2(5) of the Act, and it is not disqualified under Section 9(b)(3) to represent the employees in the Unit. Accordingly, I direct an election be held for the employees in the unit described above.

² Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated the undersigned its authority in this proceeding. Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings, made at the hearing, are free from prejudicial error and are hereby affirmed.
2. The parties stipulated, and I find, that the Employer is a corporation with an office and place of business in Herndon, Virginia, and has been engaged in the business of providing physical security services at the Ronald Reagan Building, currently located at 1300 Pennsylvania Avenue, NW, Washington, DC. In conducting its operations during the 12-month period ending July 31, 2020, the Employer performed services valued in excess of \$50,000 in States other than the Commonwealth of Virginia. Additionally, during the same time, the Employer has conducted its business operations described above within Washington, DC, and the Board exercises plenary jurisdiction over enterprises in Washington, DC.
3. I further find, as also stipulated by the parties, that the Employer is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
4. Furthermore, the parties stipulated, and I find, that there is no contract bar to an election. While there is a collective-bargaining agreement between the Employer and Intervenor covering the employees in the unit sought in the petition herein, there is no contract bar because the duration of the agreement (July 31, 2017, until September 30, 2020) exceeds three years, and the petition in this matter was filed after the last day of the third year. There is no other bar to an election in this matter.
5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

³ The Employer did not raise any issues at the pre-election hearing and did not file a post-hearing brief.

I. FACTUAL OVERVIEW

The record shows that the Petitioner was formed to represent security guards with respect to wages, hours, and other conditions of employment. In this regard, Renee Davis, Petitioner's Acting President, testified that the Petitioner's purpose was "to represent the employees in the private security industry for the purpose of improving their working conditions, their compensation, their benefits, for unjust employee discipline and giving the employees more voice on the job." The Petitioner held a meeting on July 25, 2020 via the Zoom platform, during which several employees who had signed a showing of interest cards in the unit sought participated. During the meeting, they selected the Petitioner's board members. Davis explained that the board members selected are assuming their responsibilities in an acting capacity. They selected officials for the positions of president, vice-president, treasurer, sergeant of arms, recording secretary, and two trustees. The positions were filled by employees in the petitioned-for unit. The participants in the meeting also voted unanimously to adopt the Petitioner's bylaws.⁴ Currently, the Petitioner has not reached a collective-bargaining agreement with any employer. It is Davis' understanding that the Petitioner's legal counsel has filed documents regarding the creation of the organization with the United States Department of Labor (DOL), although she could not attest whether the LM-1 form had been filed with the DOL, as required by Labor-Management Reporting and Disclosure Act, as amended (LMRDA).

Davis testified that, during the July 25 meeting, non-guards did not participate in the meeting. The membership is limited to employees working as private sector security officers, and they do not intend to represent non-guard employees in the future. Furthermore, Davis stated that the Petitioner is not affiliated and does not receive assistance, monetary or otherwise, from any organization.

II. PETITIONER'S STATUS AS A LABOR ORGANIZATION UNDER § 2(5) OF THE ACT

a. Board law on labor organization status.

The Board has explained that, to qualify as a labor organization under § 2(5) of the Act, a union "must be an organization in which employees participate; and second, it must exist for the purpose, in whole or in part, of dealing with employers concerning wages, hours, and other terms and conditions of employment." *Alto Plastics Mfg. Corp.*, 136 NLRB 850, 851-852 (1962). Section 2(5) of the Act defines "labor organization" as follows:

The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

29 U.S.C. § 152(5).

⁴ The bylaws were not submitted into the record.

The fact that a union or other employee organization is in its early stages of development, and has yet won representation rights, does not disqualify it as a “labor organization.” *Michigan Bell Telephone Co.*, 182 NLRB 632 (1970). Thus, the Board has found that the petitioner existed for the statutory purposes, although those purposes had not yet come to fruition, because employees had participated in its organization and subsequent activities even though the latter were limited by the organization’s lack of representation rights. *Roytype, Division of Litton Business Systems, Inc.*, 199 NLRB 354 (1972); *Michigan Bell Telephone Co.*, 182 NLRB 632 (1970); see also *Comet Rice Mills*, 195 NLRB 671, 674 (1972).

b. Analysis of the labor organization status under § 2(5) of the Act.

There is no dispute here that Petitioner intends to deal with the Employer concerning the wages, hours and other terms and conditions of employment of the employees in the petitioned-for unit. Davis, Petitioner's official, testified that Petitioner's purpose is to represent the working conditions of employees in the private security industry, and the Petitioner’s elected officials are employees in the petitioned-for unit. Additionally, the Intervenor failed to produce any evidence at the hearing contradicting Davis’ assertions, or supporting its denial of the Petitioner’s status as a labor organization within the meaning of the Act.

The Intervenor asserts that, because the Petitioner has not filed an LM-1 with the Department of Labor, did not produce the organization’s bylaws and has not bargained a collective bargaining agreement, it has not met its burden of showing that it is a labor organization under the Act. The production of the Petitioner’s bylaws and the filing of the LM-1 form is not required for an organization to be a labor organization within the meaning of the Act. Furthermore, a labor organization may exist under the Act without having any collective-bargaining agreements. Manifestly, each union is formed to negotiate such agreements, but cannot have a contract when it first begins to organize employees. See *Roytype, Division of Litton Business Systems, Inc.*, 199 NLRB 354 (1972).

The record reflects that the Petitioner is an organization in which employees participate by electing union officials, and that this organization exists for the purpose of dealing with employers concerning employees' grievances, wages, rates of pay, hours, and working conditions. Accordingly, under these well-established standards, I find that the Petitioner is a labor organization within the meaning of § 2(5) of the Act.

III. PETITIONER’S STATUS UNDER §9(b)(3)

a. Board law on guard and non-guard labor organizations.

Section 9(b)(3) of the Act prohibits the Board from certifying a union as the representative of a unit of guards if the union admits non-guards to membership or is affiliated, directly or indirectly, with an organization that admits non-guards to membership. 29 U.S.C. § 159(b)(3); see, e.g., *Brinks, Inc.*, 274 NLRB 970, 970–71 (1985); *Stewart-Warner Corp.*, 273 NLRB 1736, 1737 (1985); *International Harvester Co.*, 145 NLRB 1747, 1749–51 (1964); *Mack Mfg. Corp.*, 107 NLRB 209, 212 (1953). Indirect affiliation between a guard union and a non-guard union is established when “the extent and duration of [the guard union's] dependence upon [the non-guard union] indicates a lack of freedom and independence in formulating its own policies and deciding

its own course of action.” *Lee Adjustment Center*, 325 NLRB 375, 376 (1998) (quoting *Wells Fargo Guard Servs.*, 236 NLRB 1196, 1197 (1978), quoting *Magnavox Co.*, 97 NLRB 1111, 1113 (1952)). However, the affiliation must be shown by definitive evidence. See, e.g., *Children's Hosp. of Michigan*, 317 NLRB 580, 581 (1995), *enfd. sub nom. Henry Ford Health Sys. v. N.L.R.B.*, 105 F.3d 1139 (6th Cir. 1997); *Burns Sec. Servs.*, 278 NLRB 565, 568 (1986).

b. Analysis of the affiliation issue under §9(b)(3) of the Act.⁵

The Petitioner’s president testified without contradiction that it has no affiliation with non-guard unions, that non-guard employees have not participated in their meetings, and that there are no plans to represent non-guard employees in the future. As previously noted, definitive evidence is required to show that a guard union has lost the freedom to formulate its own policies and decide its own course of action based on its dependence on a non-guard union. *Lee Adjustment Center*, 325 NLRB 375, 376 (1998). Similarly, to disqualify a guard union, it is necessary to present evidence that the guard union admits to membership employees other than guards. During the hearing, no evidence was proffered to establish that the Petitioner admits to membership employees other than guards, or that it is affiliated with a non-guard union.

I therefore find that the record does not support that the Petitioner is affiliated with any non-guard union, or that the Petitioner admits non-guard employees to membership. Accordingly, I find that the Petitioner is not disqualified from representing the Unit under Section 9(b)(3) of the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by United Career Professionals (UCP), International Union, Security, Police and Fire Professionals of America (SPFPA) and Its Local No. 287, Governed United Security Professionals (GUSP), or None?

A. Election Details

The election will be conducted by United States mail.⁶ The mail ballots will be mailed to employees employed in the appropriate collective bargaining unit. Accordingly, on **Wednesday, September 16, 2020 at 3:00 p.m.**, ballots will be mailed to voters by National Labor Relations Board, Region 05, from its office at 100 S. Charles Street, Bank of America Center, Tower II, Suite 600, Baltimore, Maryland 21201.

Voters must sign the outside of the envelope in which the ballot is returned. Any ballots received in an envelope that is not signed will be automatically void.

⁵ Although the Intervenor raised in its Statement of Position that the Petitioner's representation is not exclusive to guards under Sec. 9(b)(3) of the NLRA, it did not present evidence in that regard during the hearing and failed to discuss this issue in its post-hearing brief.

⁶ The parties stipulated to the appropriateness of a mail ballot election.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by **Wednesday, September 23, 2020**, should communicate immediately with the National Labor Relations Board by either calling the Region 05 Office at (410) 962-2822 or our national toll-free line at 1-844-762-NLRB (1-844-762-6572).

All ballots will be comingled and counted at the Baltimore Regional Office on **Wednesday, October 7, 2020 at 3:00 p.m.** In order to be valid and counted, the returned ballots must be received in the Baltimore Regional Office prior to the counting of the ballots. Due to the extraordinary circumstances of COVID-19 and the directions of state or local authorities, I further direct that the ballot count will take place virtually, on a videoconference platform (such as WebEx, Skype, etc.) to be determined by the Regional Director. Each party will be allowed to have one observer attend the virtual ballot count.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending August 30, 2020, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by September 2, 2020. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the posting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review must be E-Filed through the Agency's website and may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, and must be accompanied by a statement explaining the circumstances concerning not having access to the Agency's E-Filing system or why filing electronically would impose an undue burden. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board. If a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision and if the Board has not already ruled on the request and therefore the issue under review remains unresolved, all ballots will be impounded. Nonetheless, parties retain the right to file a request for review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots.

Issued at Baltimore, Maryland this 31st day of August 2020.

(SEAL)

/s/ *Sean R. Marshall*

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